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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EDWARD B. COHEN
(202) 508-6615

October 29, 1993

Hand Delivered

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Suite 222
Washington, D.C. 20554

RE: NECA Petition Requesting Revision of the Rules to Allow
Cost Settlement Companies to Elect Average Schedule
Settlement Status (RM 8357)

Dear Mr. Caton:

Attached please find an original and twelve (12) copies of
the Comments of National Utilities, Inc. in the above-referenced
proceeding. Please date stamp the indicated copy and return it
to our messenger for delivery to our office.

Thank you for your kind attention.

Sincerely,

DAVIS WRIGHT TREMAINE

By: 

Edward B. Cohen

cc: Bob Grimm
Mike Garrett

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FAX: (202) 508-6699

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

NECA Petition Requesting Revision
of the Rules to Allow Cost
Settlement Companies to Elect
Average Schedule Settlement
Status

RM 8357

Comments of National Utilities, Inc.

National Utilities, Inc. ("NUI"), Inc., by and through the undersigned counsel, respectfully submits its comments in support of the above-referenced petition for rulemaking submitted by the National Exchange Carrier Association (the "NECA Petition").

NUI is a local exchange carrier regulated by the Alaska Public Utilities Commission ("APUC"). It maintains 2,350 access lines and operates eleven exchanges in Alaska. Four of its northern exchanges lie within the continental climatic zone which is characterized by long, cold winters unlike those in the continental United States. All four communities are remote and isolated. NUI's southeastern exchanges serve areas where the weather is equally severe, with frequent windstorms in excess of 100 mph and annual rainfall in excess of 200 inches. NUI's sister company, Bettles Telephone Co. ("BTI"), serves a small community with 50 access lines located 35 miles north of the Arctic Circle.

On April 13, 1993, NUI petitioned the Federal Communications Commission seeking a waiver of Section 69.605(c) of the Commission's rules to allow NUI to convert from cost company status to average schedule status.^{1/} It stated that in 1990, as a result of changes in the level of payments under the average schedules, it had been forced to convert to cost company status.^{2/} However, recent changes in policy of the APUC would compound the significant administrative costs and burdens faced by NUI in converting to cost: absent a waiver, NUI will be required to become a cost basis company in Alaska as well.^{3/} Accordingly, NUI petitioned the Commission to allow it to convert

1/ Petition of National Utilities, Inc. and Bettles Telephone Co., Inc. for Waiver of Section 69.605(c) of the Commission's Rules, April 13, 1993 ("Petition for Waiver").

2/ NECA's Proposed Revisions to the Average Schedules, DA 90-879, ___ F.C.C. Rcd. ___ (June 29, 1990). Because the average schedules were designed to simulate costs for the "average" company, they undercompensated small companies, such as NUI and BTI, which operate in the unusually harsh conditions faced by the companies in Alaska.

3/ A system of access charges was not introduced in Alaska for intrastate services until January 1, 1991. Prior to that time, compensation for the local exchange portion of an intrastate intraLATA call was a matter of negotiation between the local exchange carrier and Alascom. When access charges became effective, NUI and BTI were considered average schedule companies because that was their status on the federal side as of December 31, 1989. As a result, NUI and BTI were cost companies on the federal side and average schedule companies on the state side. Effective December 31, 1992, only those companies that are currently average schedule companies on the federal side will be entitled to average schedule treatment on the state side. As a result, NUI and BTI will be required to become cost basis companies for Alaska intrastate purposes as well. Miscellaneous Amendments to the Alaska Intrastate Interexchange Access Charge Manual and the Amendment of 3 AAC 48.440, R-92-2, Order No. 3 (Dec. 22, 1992); Sec. 605(c) of 3 AAC 48.440.

back to average schedule basis. That petition is pending before the Commission.

In support of its Petition for Wavier, NUI cited many of the same reasons NECA cites in its petition. First, employing average schedules provides incentives for companies to be efficient. Since the adoption of a price cap system for the largest local exchange carriers,^{4/} the Commission has sought ways to provide incentives for smaller companies not subject to price caps to become more efficient and to encourage technological development.^{5/} NUI believes that allowing companies to return to average schedules is consistent with this objective.

Any small cost-based company is entitled to include in its rate base necessary and reasonable expenses associated with providing the regulated service and to earn a regulated rate of return on that investment. While company earnings will be higher with greater investment, there is no opportunity to earn a rate of return higher than the regulated rate and therefore no economic reward for efficiency.

4/ Second Report and Order, 5 F.C.C. Rcd 6786, 6827 (1990) and Erratum, 5 F.C.C. Rcd 7664 (1990) (Erratum by Com. Car. Bur.) (LEC Price Caps Order), modified on recon., 6 F.C.C. Rcd 2637 (1991), petitions for further recon. dismissed, 6 F.C.C. Rcd 7482 (1991), further modified on recon., 6 F.C.C. Rcd 4524 (1991) (ONA Part 69 Order), petitions for recon. of ONA Part 69 Order pending, appeal docketed, D.C. PSC v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991).

5/ Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, Common Carrier Doc. 92-135, 8 FCC Rcd. 4562 (1993).

In contrast, an average schedule company has every incentive to lower costs to the greatest extent possible. Because those companies will be paid a fixed amount "that simulate[s] the disbursements that would be received . . . by a company that is representative of average schedule companies,"^{6/} the more it is able to trim its costs, the greater return it will earn for its shareholders. This is particularly true of companies like NUI which operate in harsh and inhospitable climates and whose costs generally are above those of an average schedule company. There is greater incentive for an average schedule company to employ new technologies and to promote efficiency while maintaining quality service than for cost companies whose return will be enhanced simply by increased investment in plant.

Second, significant efficiencies are achieved merely by relieving small companies of the financial and administrative burden of conducting detailed cost separations studies. For NUI, for example, those costs are significant - \$56,000 per year on the interstate side alone. Should NUI's petition for waiver not be granted, it will be required to prepare for and participate in an annual formal rate proceeding in Alaska, resulting in additional expenditures of approximately \$50,000.

Third, a more lenient policy of allowing companies to convert to average schedule would not be inconsistent with past Commission policy. On at least two occasions, the Commission has adopted "class" waivers allowing small cost companies the

^{6/} 47 C.F.R. § 69.606(a).

opportunity to convert from cost to average schedule basis. In 1987, the Commission recognized that changes in circumstances warranted allowing carriers with 5,000 or fewer access lines, with all affiliates, to have that opportunity.^{7/} Later, the Commission expanded that exemption to cover all exchange carriers with fewer than 5,000 lines.^{8/} In another proceeding, the Commission recognized the possibility that changes in circumstances may, in the future, warrant additional opportunities for cost companies to convert to average schedule treatment.^{9/}

C. Conclusion

NUI respectfully urges the Commission to commence a rulemaking proceeding and to grant the NECA petition. Its objective is a rational one in the current regulatory environment: to simplify and reduce regulatory burdens while, at the same time, adopting a process that resembles other incentive regulatory plans. NUI's own experience is just one of many scenarios that warrants greater flexibility in allowing conversions from cost to average schedule basis. Because of the new APUC regulatory requirements, time is of the essence for NUI

7/ Proposed Waiver of Section 69.605(c) of the Commission's Rules, Common Carrier Doc. No. 78-72 (June 23, 1987), 2 F.C.C. Rcd 3960 ("1987 Waiver Proceeding").

8/ Petitions Seeking Average Schedule Settlements for Affiliated Cost Companies With 5,000 or Fewer Access Lines, 3 F.C.C. Rcd 6003 (Oct. 5, 1988).

9/ Proposed Waiver of Section 69.605(c) of the Commission's Rules, Common Carrier Doc. No. 78-72 (June 23, 1987), 2. F.C.C. Rcd 3960.

and the Commission, accordingly, should grant NUI's Petition for Waiver as soon as practicable. However, the Commission should adopt a general policy on such conversions rather than proceeding on an ad hoc basis on future requests from other companies that are equally meritorious.

Respectfully submitted,

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Counsel to National
Utilities, Inc.

October 29, 1993

Certificate of Service

I certify that a copy of the foregoing Comments of National Utilities, Inc. was served on this 29th day of October, 1993, by first-class, U.S. Mail, postage prepaid, to the following persons:

Richard A. Askoff
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Edward B. Cohen